



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2005-OH-0002; FRL-9912-60-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Ohio; Particulate Matter**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule; Supplemental.

SUMMARY: On June 27, 2005, the Environmental Protection Agency (EPA) proposed action on particulate matter rule revisions that Ohio submitted on June 4, 2003. While EPA subsequently took final action with respect to provisions that it proposed to approve, EPA has not taken final action with respect to provisions relating to opacity limitations that EPA proposed to disapprove on June 27, 2005. EPA is evaluating the public comments received in response to the proposed disapproval published on June 27, 2005.

EPA believes that events subsequent to the publication of the proposed disapproval and the associated comment period have not altered the criteria for evaluating Ohio's rule revisions relating to opacity and have not otherwise influenced whether the rule revisions should be disapproved, as proposed. Nevertheless, given the passage of time, EPA is soliciting supplemental comment specifically with respect to whether events

subsequent to the prior comment period should alter EPA's proposed disapproval of Ohio's June 4, 2003, submission with respect to SIP opacity limitations. EPA is not soliciting comments on Ohio's submission or EPA's proposed June 27, 2005, action on that submission, except to the extent that events subsequent to the original comment period are relevant to EPA's evaluation of the submission and EPA's proposed action. This is not a re-opening of the original comment period, but the opening of a supplemental comment period, as described further below.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2005-OH-0002, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: aburano.douglas@epa.gov.
3. Fax: (312) 692-2551.
4. Mail: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J),

U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2005-OH-0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made

available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone John Summerhays, Environmental Scientist, at (312) 886-6067, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental

Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6067, summerhays.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 4, 2003, Ohio submitted revisions to particulate matter rules in the EPA approved SIP for the state, in Ohio Administrative Code (OAC) Chapter 3745-17. These revisions included significant revisions to Ohio's requirements regarding opacity limits applicable to various sources, reflected in revisions to OAC 3745-17-03. Among other changes, these revisions provided that sources meeting certain criteria, including operating a continuous opacity monitoring system (COMS) in compliance with pertinent data quality requirements, could opt to demonstrate compliance by showing that the COMS data meet modified opacity limits. The revisions also include various less substantive updates, simplifications, and clarifications in other parts of OAC 3745-17 that are unrelated to the applicable opacity standards.

EPA proposed action on these revisions to OAC 3745-17 on June 27, 2005, published at 70 FR 36901. EPA proposed to disapprove the revisions in OAC 3745-17-03, finding that the

revisions relaxed applicable opacity requirements without any demonstration pursuant to Clean Air Act section 110(l) that the relaxation does not interfere with attainment or maintenance of the NAAQS or satisfaction of other requirements. EPA proposed to approve most of the remaining revisions that Ohio submitted. These remaining revisions were part of a subsequently submitted and subsequently approved set of revisions, and so these remaining revisions are not at issue here. EPA received comments on the June 25, 2007, proposal from several commenters.

On September 10, 2009, Ohio submitted additional rule revisions expressly intended to consolidate its air quality standards. These rule revisions included an update to the cross reference in OAC 3745-17-03(A), intended to clarify that the ambient monitoring methods given in OAC 3745-17-01 were to be used to assess attainment with air quality standards in a rule relocated from OAC 3745-17-02 to OAC 3745-25-02. EPA published direct final action approving the air quality standards-related revisions on October 26, 2010, at 75 FR 65572.

Unfortunately, EPA's October 2010 action on Ohio's September 2009 submission (addressing the state's air quality standards rules) erroneously appeared to suggest that EPA was approving the entirety of the substantive revisions to OAC 3745-17-03, even though the action only addressed the revision to the

cross reference in paragraph A and not the other substantive provisions in OAC 3745-17-03 such as the opacity-related provisions in OAC 3745-17-03(B). Upon finding this error, EPA published action on April 3, 2013, at 78 FR 19990, to correct this error pursuant to its authority under the Administrative Procedures Act. Two parties then objected to this method of correcting the typographical error and requested that EPA address this error pursuant to EPA's authority under Clean Air Act section 110(k)(6). EPA agreed to these requests and published proposed action pursuant to Clean Air Act section 110(k)(6) on February 7, 2014, at 79 FR 7412. EPA is currently evaluating comments on the February 2014 proposal and will take final action upon that proposal separately.

EPA believes that neither these events nor any other events warrant any alterations in the criteria for evaluation of Ohio's opacity rules or in the analysis of Ohio's June 4, 2003, submission. Actions on other parts of OAC Chapter 3745-17 rules and actions pertinent to revision of the cross reference in OAC 3745-17-03(A) and other provisions related to air quality standards are not pertinent to EPA's proposed disapproval of the revisions to the substantive opacity provisions of OAC 3745-17-03. EPA has not issued any revised guidance or taken other action on issues pertinent to its review of Ohio's opacity rule

revisions. Therefore, EPA believes that no new issues have arisen since its June 27, 2005, proposed disapproval and the associated comment period that warrant consideration before EPA takes final action on these rule revisions. However, EPA is specifically soliciting comment on whether any events subsequent to the comment period on the June 27, 2005, action should have any impact on that proposed disapproval, and if so how those events should influence the appropriate criteria.

II. What Action is EPA Taking?

EPA is soliciting comments on whether any events which have occurred, or any policy considerations which have arisen, after the comment period on EPA's June 27, 2005, proposed disapproval of revisions to Ohio's opacity rules in OAC 3745-17-03 should be considered by EPA in evaluating these rule revisions. EPA's proposed rulemaking of June 27, 2005, solicited comments that could be made at that time and EPA is not soliciting resubmission of prior comments or submission of additional comments that could have been made at that time. EPA is specifically soliciting only comments that could not have been made at the time of its prior proposed rulemaking because they are based upon events or policy considerations that arose subsequent to that comment period.

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect

small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

Because it is not a "significant regulatory action" under Executive Order 12866 or a "significant energy action," this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Particulate matter, Reporting and recordkeeping requirements.

Dated: June 10, 2014.

Susan Hedman,
Regional Administrator, Region 5.

[FR Doc. 2014-14831 Filed 06/25/2014 at 8:45 am; Publication
Date: 06/26/2014]